

Southampton City Council

Local Code of Conduct for issuing of Notice to Improve & Penalty Notices for School Absence 2024/2025

This code of conduct is informed by the Education (Penalty Notices) (England) Regulations 2007/1068, amendments 2012/1046, 2013/757 and 2024/210 and should be read in conjunction with the working together to improve school attendance statutory guidance from the DFE.

The purpose of this local Code of Conduct is to ensure that penalty notices for school absence are issued in a manner that is fair and consistent across Southampton City Council. The code sets out the arrangements for administering penalty notices in Southampton and must be adhered to by anyone issuing a penalty notice for school absence in this area. The code complies with relevant regulations and the Department for Education's national framework for penalty notices as set out in the ['Working together to improve school attendance'](#) guidance.

Consultation

1. This code has been drawn up in consultation with the headteachers and governing bodies of state-funded schools and the local police force.

Legal Basis

2. Penalty Notices may be issued to a parent (for a definition of a parent, see point 6) as an alternative to prosecution for irregular school attendance under s444 of the Education Act 1996. They can only be issued in relation to pupils of compulsory school age in maintained schools, pupil referral units, academy schools, Alternative Provision academies and certain off-site places as set out in section 444A(1)(b).
3. The Education (Penalty Notices) (England) Regulations 2007 (and subsequent amendments as above) set out how penalty notices for school absence must be used.
4. A penalty Notice can only be issued by an authorised officer: that is, a headteacher or a deputy or assistant head authorised by them, an authorised Local Authority Officer or a Police Constable. For schools that are within

Southampton City Council's area, penalty notices will be issued by a Local Authority Officer.

5. The National Framework for Penalty Notices is published in statutory guidance 'Working together to improve school attendance'. It provides further National Guidance on the operation of penalty notice schemes for school absence in England.
6. Within this Code of Conduct a parent is defined as per Section 576 of the Education Act 1996:
 - All natural parents, whether married or not.
 - Any person who, although not a natural parent, has parental responsibility/care for a child/young person as defined in the Children's Act 1989 through a Court Order, formal agreement, Residency Order, adoption or the child's legal guardian.
 - Any person who, although not a natural parent, has care of a child/young person and considered to be a parent in education law.
7. Penalty Notices will usually be issued to the parent or parents with day-to-day responsibility for the pupil's attendance or the parent or parents who have allowed the absence (regardless of which parent has applied for a leave of absence).

Rationale

8. Research published by the Department for Education in May 2022 found pupils with higher attainment at KS2 and KS4 had lower levels of absence over the key stage compared to those with lower attainment.
 - Pupils who did not achieve the expected standard in reading, writing and maths in 2019 had an overall absence rate of 4.7% over the key stage, compared with 3.5% among pupils who achieved the expected standard and 2.7% among those who achieved the higher standard.
 - Pupils who did not achieve grade 9 to 4 in English and Maths GCSEs in 2019 had an overall absence rate of 8.8% over the key stage, compared with 5.2% among pupils who achieved a grade 4 and 3.7% among pupils who achieved grade 9 to 5 in both English and Maths.
9. For the most vulnerable pupils, regular attendance is also an important protective factor and often the best opportunity for needs to be identified and support provided.
10. Where difficulties arise with school attendance, professionals should take a 'support first' approach in line with the DfE's 'Working together to improve school attendance' guidance, only resorting to legal enforcement when necessary. The aim is that the need for legal enforcement is reduced by taking

a supportive approach to tackle the barriers to attendance and intervening early before absence becomes entrenched.

11. The National Framework for Penalty Notices is based on the principles that penalty notices should only be used in cases where:

- support is not appropriate (e.g. a term time holiday) or where support has been provided and not engaged with or not worked, and
- they are the most appropriate tool to change parental behaviour and improve attendance for that particular family.

When may a penalty notice for absence be appropriate?

12. When the national threshold has been met: when a school becomes aware that the national threshold has been met, they must consider whether a penalty notice can and should be issued or not. The national threshold has been met when a pupil has been recorded as absent for 10 sessions (usually equivalent to 5 school days) within 10 school weeks¹, with one of, or a combination of the following unauthorised absence codes:

(a) code G (the pupil is absent without leave, for the purpose of a Holiday/Leave of Absence),

(b) code N (the circumstances of the pupil's absence have not yet been established). However, the correct absence code should be established in a timely manner but no later than 5 school days and the pupil's attendance certificate should be updated as per regulation 10 (7) to (9) of the School Attendance (Pupil Registration) (England) Regulations 2024.

(b) code O (none of the other rows of Table 3 in regulation 10(3) of the School Attendance (Pupil Registration) (England) Regulations 2024 applies), and

(d) code U (the pupil attended after the taking of the register ended but before the end of the session, where no other code applies)

13. During or following a truancy sweep: the LA in consultation with Police can issue a penalty notice. Pupils identified on more than one external Truancy Sweep in a Public Place in an academic year, without the absence being authorised by the school and the absence being parentally condoned or pupils returned to school by the Police, having been caught truanting. By definition,

¹ A school week means any week (Monday to Sunday) in which there is at least one school session. The 10 school-week period when the national threshold applies may span different terms or school years (e.g. 2 sessions of unauthorised absence in the Summer Term and a further 8 within the Autumn Term).

an external truancy sweep is held in a public place and conducted by a member of Hampshire Constabulary and a Local Authority Officer.

14. Failure by a parent to ensure the child is not in a public place whilst being excluded from school on more than one occasion. The school must ensure that the parent/s are fully notified regarding the exclusion.
15. If, in an individual case, the Local Authority (or other authorised officer) believes a Penalty Notice would be appropriate, they retain the discretion to issue one before the threshold is met.
16. If repeated penalty notices are being issued and they are not working to change behaviour they are unlikely to be most appropriate tool. The national framework for penalty notices sets out that a maximum of 2 penalty notices per child, per parent can be issued within a rolling 3-year period. If the national threshold is met for a third time (or subsequent times) within 3 years, the Council will make a decision whether a prosecution will be instigated or other action is taken. If a prosecution is found to be the most appropriate action, the Council will submit the relevant paperwork to the Local Legal Processes.
17. For the purpose of the escalation process, previous penalty notices include those not paid (including where prosecution was taken forward if the parent pleaded or was found guilty) but not those which were withdrawn due to being issued to the wrong person or they were materially defective.

Key Considerations prior to the Issue of a Penalty Notice for School Absence

18. The following considerations will be made before issuing a penalty notice to ensure consistency of approach:
 - In cases where support is not appropriate (for example, for holidays in term time), consider on a case-by-case basis:
 - Is a penalty notice the best available tool to improve attendance and change parental behaviour for this particular family or would one of the other legal interventions be more appropriate?
 - Is issuing a penalty notice in this case appropriate after considering any obligations under the Equality Act 2010?
 - For Local Authorities only- Is it in the public interest to issue a penalty notice in this case given the Local Authority would be accepting responsibility for any resulting prosecution for the original offence in cases of non-payment?

- In cases where support is appropriate, consider on a case-by-case basis:
 - Has sufficient support already been provided? Sufficient support will usually include but not restricted to:
 - Telephone calls to parent/s.
 - Letters sent to parent/s outline the school's concerns regarding attendance and what support they can offer.
 - Meetings with parent/s to discuss the issues affecting attendance and a supportive action plan put in place.
 - Meetings with the pupil to discuss the issues affecting attendance and a supportive action plan put in place.
 - Evidence of referrals made to outside agencies to support the pupil and/or the parent/s.
 - Is a penalty notice the best available tool to improve attendance and change parental behaviour for this particular family or would one of the other legal interventions be more appropriate?
 - Is issuing a penalty notice in this case appropriate after considering any obligations under the Equality Act 2010?
 - For Local Authorities only- Is it in the public interest to issue a penalty notice in this case given the Local Authority would be responsible for any resulting prosecution for the original offence in cases of non-payment?

If the answer to the above questions is 'yes', then a penalty notice (or a notice to improve in cases where support is appropriate) will usually be issued.

Notice to Improve

19. A Notice to Improve is a final opportunity for a parent to engage in support and improve attendance before a penalty notice is issued. If the national threshold has been met and support is appropriate but offers of support have not been engaged with by the parent or have not worked, a Notice to Improve should usually be sent to give parents a final chance to engage in support. An Authorised Officer can choose not to use one in any case, including cases where support is appropriate, but they do not expect a Notice to Improve would have any impact on a parent's behaviour (e.g. because the parent has already received one for a similar offence).
20. The length of the Notice to Improve period will be 4 school weeks.
21. The Notice to Improve will give clear guidance to the parent/s regarding the unauthorised absence that has triggered the Notice to Improve and what steps need to be taken to ensure that no further action is taken.

22. At the conclusion of the Notice to Improve period, the School will be required to send the LA an up-to-date attendance certificate and any further information concerning the absences that may have occurred. This could include copies of truancy call log, telephone calls made and received by the School, records of home visits completed, meeting minutes, letters sent or received regarding absence.
23. If there is further unauthorised absence during the Notice to Improve period, a penalty notice will be issued.

Procedure for Issuing a Notice to Improve and Penalty Notices

24. The Council's Southampton Attendance Support Service will receive and issue all requests for Action for the issue of a Notice to Improve, Penalty Notices and Prosecutions. This will ensure consistent and equitable delivery, avoid duplication, retain school-home relationships and allow cohesion with other enforcement sanctions. Requests will be received from schools (approved by Head Teachers or designated officers) and action considered, provided that:
- All relevant information is accurate and supplied in the specified manner on the form and supporting evidence attached. If the form or supporting evidence is inadequate, it will be returned to the School for further consideration, without any further action being taken by the Council.
 - **The registration certificate accompanying the request needs to be accurate, it is a legal document, and as such it should portray the pupil's actual attendance/non-attendance.** (Parents will be advised to contact the school direct if they have a dispute over the accuracy of the registration certificate.) **There is an expectation that school will provide a statement of evidence and may have to attend court if a Penalty Notice is not paid and the case proceeds to court.**
 - The completed request must be submitted securely to the Council's Southampton Attendance Support Service Penalty Notice mailbox via Anycomms+ no later than four weeks after the last date of the regular non-attendance. Failure to do this may mean that the Penalty Notice Request cannot be processed and dealt with in a timely manner.
 - For requests made for absence towards the end of an academic year 2023/2024 (for leave of absence only), these must be submitted no later than **20th September 2024** (in the following academic year). Any requests submitted after this date they will be declined and the School will be notified.
 - The circumstances of the pupil's absence meets the requirements of this Code of Conduct and National Thresholds of 10 unauthorised sessions within a 10 week school period.
 - The issue of a Notice to Improve and Penalty Notice does not conflict with other intervention strategies (for example Education Welfare Officer or Social Care involvement) in place or other enforcement sanctions already being processed.
 - The request for Action to issue a Penalty Notice for Unauthorised Absence (not Leave of Absence) must be received by the Council 20

days before the end of the academic year. In the case of a Year 11 pupil, requests for consideration for PN must be received 20 days before the last Friday in June (27th June 2025).

- In cases where a Request for Issue of a Penalty Notice indicates there are other agencies involved with the family, further investigations concerning the agencies involvement will take place by the Council before a decision is made to issue.
- In the event of non-payment, partial payment or late payment of the Penalty Notice, the Council will consider each individual case and if the legal threshold and public interest test are met, a prosecution will be considered.
- In cases where school-aged siblings attend a school which is different from the one requesting issue of a Penalty Notice, there is an expectation that further enquiries should be made by the school to ensure that the LA, schools & Academies meet the responsibilities in terms of consistency and fairness.
- In cases where there is Education Welfare Officer involvement with the pupil or family, before a decision is made, the school must consult with the EWO case holder who has specific knowledge of the family's circumstances. This consultation must be evidenced and provided with the request for a penalty notice.
- Please note, if the evidence supporting the request is missing or not complete, Southampton Attendance Support Service will not be contacting the School to gain the evidence. The request will be declined and returned to the School giving the reasons why.
- Penalty Notices will only be issued by first class post and will not be served personally. Service by post is preferred for evidential reasons and to ensure the Council and Schools meet Health and Safety requirements.

How authorised officers will work together

25. Authorised officers should work together to ensure that penalty notices are used when likely to be effective and change behaviour.
26. An authorised officer is a headteacher or someone authorised by them (a deputy or assistant head), a local authority officer or the police. The LA should set out which authorised officers will issue penalty notices in their area. For Southampton City Council, this is the Legal Co-ordinator in the Southampton Attendance Support Service.
27. Whoever is issuing the penalty notice should make a decision as to whether proportionate support has been provided, and whether that support has worked or not. Where there is dispute, authorised officers are expected to defer to the local authority's judgement about whether sufficient support has been provided before issuing a penalty notice.

28. The LA will inform the school about whether penalty notices are paid, withdrawn or prosecuted for non-payment. They will do this by a notification letter sent to the School's anycomms+ account as indicated on the School's request.
29. Where pupils move between local authority areas, **Southampton City Council** can be contacted on **crossborder.penaltynotice@southampton.gov.uk** to find out if penalty notices have been issued previously.

Date: Statutory from 19th August 2024

Date to be reviewed: August 2025